

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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THOMAS KEARNEY,

Plaintiff,

v.

ORDER  
09-CV-679A

GLENN S. GOORD, et al.,

Defendants.

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This case was referred to Magistrate Judge H. Kenneth Schroeder, Jr. , pursuant to 28 U.S.C. § 636(b)(1). On June 30, 2010, plaintiff filed a motion to substitute the representative of the estate of defendant Brian Rydza as a defendant in this matter.<sup>1</sup> On December 29, 2010 and January 21, 2011, Kelly A. Foster, Executor of the Estate of Brian Rydza, filed nearly identical motions to dismiss the action against Brian Rydza for insufficient service of process. On March 14, 2011, Magistrate Judge Schroeder filed a Report and Recommendation, recommending that plaintiff's motion to substitute be granted and defendant's motion to dismiss be denied.

The Court has carefully reviewed the Report and Recommendation, the record in this case, and the pleadings and materials submitted by the parties, and no objections having been timely filed, it is hereby

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<sup>1</sup> Plaintiff filed an essentially identical motion on August 18, 2010 (Dkt. No. 30). That motion is denied as mooted by this Order

ORDERED, that pursuant to 28 U.S.C. § 636(b)(1), and for the reasons set forth in Magistrate Judge Schroeder's Report and Recommendation, plaintiff's motion to substitute is granted and defendant's motion to dismiss is denied.

The case is referred back to Magistrate Judge Schroeder for further proceedings.

SO ORDERED.

*s/ Richard J. Arcara*

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HONORABLE RICHARD J. ARCARA  
UNITED STATES DISTRICT JUDGE

DATED: March 31, 2011